Application Number 09/907,230
Amendment dated March 8, 2005
Responsive to Office Action mailed December 15, 2004

REMARKS

This Amendment is responsive to the Office Action mailed December 15, 2004, the period of response for which runs through March 15, 2005. Applicants have amended claim 15. Claims 1-37 are still pending.

In the Office Action, the Examiner rejected claims 1-6, 8, 10, 14-20 and 22-28 under 35 U.S.C. 102(e) as being anticipated by Carlson (US 6,715,122); and rejected claims 29-32 and 35-37 under 35 U.S.C. 102(e) as being anticipated by Stebbings (US 6,684,199).

The Examiner also rejected claims 7 and 11-12 under 35 U.S.C. 103(a) as being unpatentable over Carson in view of Stebbings; rejected claims 9, 13 and 21 under 35 U.S.C. 103(a) as being unpatentable over Carson in view of Sims (US Patent Application Publication No. 20020016919); and rejected claims 33 and 34 under 35 U.S.C. 103(a) as being unpatentable over Stebbings in further view of Sims.

Applicants respectfully traverse the rejections. The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

All pending claims recite an access key having uncorrected data and associated error correction information having one or more errors. Thus, as claimed, the access key itself includes both uncorrected data and associated error correction information. Moreover, as claimed, the error correction information of the access key has one or more errors. These features are lacking from each of the applied references. For this reason, all pending rejections must be withdrawn.

For example, claim 1 recites a method comprising receiving input from a user; receiving an access key from a medium, wherein the access key includes uncorrected data and associated error correction information having one or more errors; and controlling access to the medium based on the input and the uncorrected data. Claim 15 recites a computer-readable medium comprising instructions for causing a programmable processor to receive input from a user; read an access key from a medium, wherein the access key includes uncorrected data and associated error correction information having one or more errors; and control access to the medium based on the input and the uncorrected data.

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Claim 23 recites a computer-readable medium, comprising an access key having uncorrected data and associated error correction information having one or more errors; digital content; and an executable software application to control access to digital content based on the uncorrected data.

Claim 29 recites a method, comprising generating an access key having uncorrected data and incorrect error correction information; and associating digital content and the access key on a computer-readable medium.

Accordingly, all pending independent claims recite an access key having uncorrected data and associated error correction information having one or more errors. As outlined in Applicants' specification, an access key having uncorrected data and associated error correction information having one or more errors can be very useful to protect digital content from unauthorized copying. For example, when the content of the medium having the access key is copied, the error correction information can be applied to the uncorrected data to produce a second access key for the copied medium. However, because the associated error correction information itself has been created to include one or more errors, the second access key for the copied medium will be incorrect. Accordingly, a user attempting to access the content on the second medium can be thwarted in such attempts. Claim 5 is dependent upon claim 1 and recites the additional steps of copying content from the medium to a second medium; applying the error correction information to the uncorrected data to produce a second access key; and copying the second access key to the second medium.

Nothing in any of the applied references is even remotely suggestive of an access key that itself includes both uncorrected data and associated error correction information having one or more errors, as recited in all pending claims. This feature is simply lacking from each of the applied prior art references.

The Carson reference describes a copy protection scheme that is very different from the features of the pending claims. Importantly, the Carson reference does not disclose or suggest an access key having uncorrected data and associated error correction information having one or more errors. In fact, the techniques of Carson do not even make use of an access key whatsoever, much less an access key having uncorrected data and associated error correction information having one or more errors, as required by Applicants claims.

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In Carson, the digital content itself is changed to introduce errors in the digital content. The errors introduced to the content by Carson are said to be non-problematic in the original, but manifest more significantly in any copies of the original. Again, however, Carson does not make use of any access key, much less an access key having uncorrected data and associated error correction information having one or more errors.

More specifically, Carson describes a process in which a second data set is superimposed (intermingled) with the user data at specific locations by substituting data samples of the second data set in place of various data samples in the user data. See column 3, lines 34-36. At the location where the second data set samples are written over and replace the user data samples an uncorrectable error is written. See column 3, lines 36-39. When reading the original, these uncorrectable errors can be ignored. See column 3, lines 40-42. However, if a copy is made of this original, the second data samples are made part of the signal without an internal notification for a reading device to ignore or conceal the data set sample values. See column 3, lines 56-64. In the case of an audio disk, this is said to add disruptive sounds to audio tracks in the copy. See column 3, line 66 to column 4, line 3.

Applicants pending claims do not recite the introduction of errors into data or content, as taught by Carson. Instead, the pending claims recite an access key having uncorrected data and associated error correction information having one or more errors. This feature recited in all pending claims is not taught by Carson.

In the Office Action, the Examiner stated that Carson describes a method for intermingling errors within data which is applicable to any data set capable of being digitally represented. Citing column 3, lines 30-31. Without citing any passage of Carson relating to an access key, however, the Examiner then stated that "this includes playback data or access key data."

The Examiner's conclusion that column 3, lines 30-31 of Carson suggests the intermingling of errors with an access key is improper. Carson does not make use of any access key, and therefore lacks any suggestion of the intermingling of errors with an access key. The Examiner's statement that "this includes playback data or access key data" implies that Carson teaches the intermingling of errors with an access key, which is never disclosed or suggested in Carson. Thus, the Examiner is mischaracterizing the teaching of Carlson.

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Applicants also note that the Examiner's reference to the passage of Carson at column 3, lines 30-31, takes this passage out of context. In particular, this passage does not imply that the copy protection scheme of Carson can be implemented by intermingling errors with an access key. Instead, this passage of Carson is simply indicating that the techniques of intermingling errors into data content, although described in the context of data stored on a CD, might be used with other digital content formats.

In order to support an anticipation rejection under 35 U.S.C. 102(e), it is well established that a prior art reference must disclose each and every element of a claim. This well known rule of law is commonly referred to as the "all-elements rule."[1] If a prior art reference fails to disclose any element of a claim, then rejection under 35 U.S.C. 102(e) is improper. [2]

Carson fails to disclose each and every limitation set forth in all of the pending claims. Specifically, the techniques of Carson do not even make use of an access key, whatsoever. Therefore, Carson clearly lacks any teaching of an access key having uncorrected data and associated error correction information having one or more errors, as required by Applicants claims. Moreover, the teaching of Carson of introducing errors into digital content would not have led a person of ordinary skill in the art to introduce errors into an access key, much less use an access key having uncorrected data and associated error correction information having one or more errors.

For at least these reasons, the Examiner has failed to establish a prima facie case for anticipation of Applicants' claims 1-6, 8, 10, 14-20 and 22-28 under 35 U.S.C. 102(e). Furthermore, in view of the basic deficiencies of the Carson reference, the rejections of claims 7 and 11-12 under 35 U.S.C. 103(a) as being unpatentable over Carson in view of Stebbings and the rejections of claims 9, 13 and 21 under 35 U.S.C. 103(a) as being unpatentable over Carson in view of Sims are also improper. Withdrawal of these rejections is courteously requested.

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[1] See *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ 81 (CAFC 1986) ("it is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention").
[2] *Id.* See also *Lewmar Marine, Inc. v. Barient, Inc.* 827 F.2d 744, 3 USPQ2d 1766 (CAFC 1987); *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (CAFC 1990); *C.R. Bard, Inc. v. MP Systems, Inc.*, 157 F.3d 1340, 48 USPQ2d 1225 (CAFC 1998); *Oney v. Ratliff*, 182 F.3d 893, 51 USPQ2d 1697 (CAFC 1999); *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 57 USPQ2d 1057 (CAFC 2000).

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With regard to the rejections of claims 29-32 and 35-37 under 35 U.S.C. 102(e) as being anticipated by Stebbings, and the rejections of claims 33 and 34 under 35 U.S.C. 103(a) as being unpatentable over Stebbings in view of Sims, Applicants note that Stebbings also lacks any suggestion of an access key having uncorrected data and associated error correction information having one or more errors. For this reason, these rejections cannot stand.

The Stebbings reference (unlike Carson) does describe the use of an authentication key. However, Stebbings (like Carson) does not disclose or suggest error correction information of a key that includes one or more errors. In fact, Stebbings appears to lack any suggestion of a key that includes error correction information whatsoever, much less error correction information that includes one or more errors.

The Stebbings reference appears to describe a process in which predetermined errors are introduced into data content. However, in Stebbings, the predetermined errors that are introduced into the content are the authentication key itself. In Stebbings, the content protection scheme appears to function by using the predetermined errors to authenticate that the content is legitimate. However, if a copy is made, the predetermined errors are corrected, thereby removing the predetermined errors, and thus, the authentication key, from the copied content. Since the copied content does not include the predetermined errors, it lacks the authentication key needed to access the content.

Again, Stebbings lacks any suggestion of a key that includes error correction information. Therefore, Stebbings clearly lacks any suggestion of an access key having error correction information that includes one or more errors. In Stebbings, the errors themselves are the authorization key that is purposely introduced into the content. The keys of Stebbings, however, do not include error correction information, much less error correction information having one or more errors, as required by all pending claims.

For these reasons, the rejections of claims 29-32 and 35-37 under 35 U.S.C. 102(e) as being anticipated by Stebbings, and the rejections of claims 33 and 34 under 35 U.S.C. 103(a) as being unpatentable over Stebbings in view of Sims cannot stand.

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CONCLUSION

For at least the reasons set forth above, all claims in this application are in condition for allowance. Applicants respectfully request reconsideration and prompt allowance of all pending claims. With regard to the various dependent claims, Applicants reserve further comment at this time. However, Applicants do not acquiesce to any of the rejections or characterizations of the prior art, and reserve the right to further address other the features of the independent claims or dependent claims, if necessary.

Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

March 8, 2005

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